THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 30-08-2007

WRIT PETITION No. 18292 OF 2007

BETWEEN:

Smt.Badigantla Chinnammalu

…Petitioner

And

The Government of Andhra Pradesh. Home Department,
Secretariat Buildings, Hyderabad, Represented by its Secretary
And others.

…Respondents

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ORDER:

The petitioner seeks to issue a Writ of Mandamus, declaring the in action on the part of the Superintendent of Police, East Godavari District, Kakinada in not registering the F.I.R., and investigating into the case filed by the petitioner pursuant to the complaint submitted by the petitioner on 2-12-2006 as arbitrary, illegal and violative of the procedure contemplated under the provisions of the Code of Criminal procedure and also violative of the fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India and direct the respondents to take action against the accused persons mentioned in the complaint.

It is the case of the petitioner that the petitioner submitted a written information on 2-12-2006 before the Superintendent of Police, East Godavari District, which was also received by the Central Complaint Cell in receipt No.9/CCC/2006, dated 2-12-2006 and a copy was also sent by the registered post to the Station House Officer, Pithapuram Police Station, Pithapuram, East Godavari District.

The perusal of the complaint goes to show that the petitioner purchased the property bearing door No.11-4-1 to an extent of Ac.1-20 cents, situated at Pithapuram Municipality,

Ward No.11, East Godavari District for a sum of Rs.29,00,000/- vide registered document No.3680 of 2005 from M.Jogeswara Rao and others on the assurance and encouragement given by an Advocate A.Trinath Rao of Pithapuram. It is stated that he has legally suggested about the sanctity of the said property and made her to believe about the clear title.

The said vendors were identified by the said Advocate A.Trinath Rao and K.Jagadeesh. During the course of the sale transaction, the said Advocate obtained certain cheques, promissory notes and blank papers from the petitioner as well as the son of the petitioner B.Srinivasa Rao, assuring that he will hand over the same after the registration is over, but he started black mailing the petitioner and on the other hand, filed the cheque bouncing cases against the petitioner through his henchmen.

Later on, the petitioner came to know that the said property is a disputed property. When the petitioner asked her vendors about the said dispute in November, 2006, they have assured that they will clear of the existing disturbances and hand over possession of the said property, but they could not deliver possession of the said property. It is stated that the said Advocate is telling that if the petitioner approaches any Court of law or any law enforcement authority, they will take notorious actions upon the petitioner as well as her son who is a Government Doctor. Therefore, she become helpless for their foul play and unable to enter into the said property. Accordingly, she requested the police authorities for taking

necessary action against the said vendors as well as the Advocate for cheating the petitoner and also requested for protection from their illegal attempts and illegal activities.

On this writ petition, it has been alleged that said A.Trinath Rao, Practising Advocate assured to take care of legal aspects such as verification of title, bonafides of the Vendors as the petitioner belong to Kakinada town and not well versed with the locals of Pithapuram, she believed him and also agreed to pay commission for doing aforesaid acts and rendering required help. The said Advocate also promised that the property is worth about Rs.1,20,00,000/-, but the vendors have agreed to sell the same for a sum of Rs.29,00,000/- only as they are in need of money. Though the petitioner did not believe the said version, but the said Advocate made her to believe him, stating that he is close to the said vendors. It is further stated that after purchasing the property they wanted to construct a compound wall after obtaining permission and requested the said Advocate to return the instruments such as blank cheques and promissory notes etc and when she attempted to construct the compound wall, the Government Junior College management disputed the right of the petitioner and with the help of the Revenue authorities, they restrained the petitioner from entering into the land, but the said Trinath Rao failed to render any help. On the other hand, he started black mailing and asked her not to raise this issue before any authorities, or else he will implicate the petitioner in some or other false case. It is further stated that the petitioner also raised a dispute before the elders

and as a counter blast, the said Trinath Rao started using the blank cheques with the help of his wife and one of the vendors, demanding payment of the cheque amount. For the notice, reply was also given and in order to harass the petitioner and her son, several cases under Section 138 of Negotiable Instruments Act have been filed in various Courts and said Trinath Rao also threatened the petitioner. Therefore, the petitioner made a complaint before the third respondent, but he refused to receive the same and therefore, a complaint has been filed before the Superintendent of Police.

It is stated that having received the complaint, the Superintendent of Police also failed to take any action and therefore, once again another complaint was sent by registered post on 16-7-2007 requesting to investigate and to take appropriate action, but no action has been taken.

It is further stated that the petitioner would have filed a private complaint before the concerned Magistrate of Pithapuram, but said Trinath Rao being the practicing Advocate is penly saying that he will not allow any Advocate to accept the brief of the petitioner and if any Advocate accepts, the petitioner will not be allowed to attend the Court as a complainant. Due to the threats made by the vendors and the said Advocate, the petitioner afraid of going to Pithapuram and look after the dispute raised by the college management in respect of the said property. It is stated that the petitioner has no other remedy except to approach this Court to direct the respondents to register the case and investigated the same.

The perusal of the complaint dated 2-12-2006 does not disclose when the petitioner approached the concerned Station House Officer and when the third respondent refused to receive the complaint. Therefore, I am not inclined to express any opinion with regard to the allegation of the petitoner that in spite of making a complaint, the third respondent declined to receive the same. There is no dispute with regard to making a complaint before the Superintendent of Police on 2-12-2006. The reminder dated 16-7-2007 was also sent by registered post.

It is the grievance of the petitioner that the respondents have not taken any action based on the complaint and that the petitioner also unable to file a private complaint as the main person who cheated the petitioner is a practicing Advocate at Pithapuram.

Chapter XII of Code of Criminal Procedure 1973 (for short “the Code”) relates to the information to the Police and their powers to investigate. Under Section 154 of the Code, every information relating to the commission of cognizable offence given in writing or reduced to writing duly signed by the person furnishing the information shall be entered into the book and if the Station House Officer refuses to receive such written information, it is open for the complainant to intimate the substance of the same to the Superintendent of Police. If any cognizable offence is committed, after receipt of the written information, the Police having jurisdiction over the area is entitled to investigate the cognizable offence. Section 157 of

the Code deals with the procedure for investigation. Section 156 of the Code deals with police officer's power to investigate cognizable cases.

When the information is laid with the Police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case,instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by the Supreme Court in **All India Institute of Medical Sciences Employees Union (Reg) through its President Vs. Union of India and others**[1], in which it was specifically observed that writ petition in such cases is not to be entertained. The above position was again highlighted in the case of **Gangadhar Janardan Mhatre Vs. State of Maharastra**[2] and **Minu Kumari and Another Vs. State of Bihar and Others**[3].

Following the aforesaid judgments, the Apex Court in the recent Judgment in the case of **Hari Singh Vs. State of Utter Pradesh**[4] held that writ petition is not to be entertained.

No doubt, it is mandatory duty of the police officer to register a case on the complaint of a cognizable offence by a citizen under Section 154 of the Code and at the registration of the crime on the basis of the information disclosing cognizable offence in compliance of the mandate under Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable and credible. The officer in-charge of the Police Station is statutorily obliged to register a case and then proceed with investigation if he has reason to suspect the commission of an offence which is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. The Apex Court in the case of **Ramesh Kumari Vs. State(N.T.C.of Delhi) and others**[5] held that it is the mandatory duty of the Station House Officer to register the case whenever an information has been furnished about the cognizable offence. The facts of the said case are that the F.I.R., was not registered pursuant to the complaint on the ground that some contempt petition is pending before the High Court. In the said case, complaint was filed against the Police officer. The Solicitor General having opposed the registration of the case, but conceded that if at all

the case has to be registered and investigated is to be carried out, the C.B.I. would be an appropriate authority to register the case and investigate and in those circumstances, it was directed to register and investigate the case by an independent agency like C.B.I.

I am of the opinion that the ratio decided in the case of Ramesh Kumari is not at all in conflict with the aforesaid Judgments with regard to the alternative remedy is concerned. Therefore, I am of the opinion that in view of the aforesaid Judgments, the petitioner has a remedy by way of approaching the concerned Magistrate under Sectin 190 read with Section 200 of the Code as held in the case of Hari Sigh Vs. State of Utter Pradesh.

In so far as the allegations that the said Advocate is being the practicing Advocate of Pithapuram and he is openly claiming that no Advocate can accept the brief from the complainant, no foundation has been laid for the said averment as admittedly the petitioner has not approached any Advocate and no attempt has been made to lay a complaint before the concerned Magistrate. If there was any such instance, the petitioner would have made a complaint. As per the averments made in the writ petition, there are serious disputes about the property and several cheque bounce cases are pending against the petitioner and therefore, I am of the opinion that these disputes questions of fact cannot be decided in the writ petition. The limited prayer in this writ petition is to direct the respondents to register the case based on the complaint and to

investigate into the same. As the petitioner has got alternate remedy as aforesaid, I am of the opinion that this writ petition is not to be entertained.

Accordingly, the writ petition is dismissed. No order as to costs.

V.ESWARAIAH, J

Date: 30-08-2007.

Shr.

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[1] (1196) 11 SCC 582

[2] (2004) 7 SCC 768

[3] (2206) 4 SCC 359

[4] 2006(5) Supreme 513

[5] AIR 2006 S.C.1322